

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

ERIC LEE ERICKSON,

Plaintiff,

v.

JOSEPH LEHMAN, et al.,

Defendants.

CASE NO. C05-867-JLR

AMENDED ORDER
DISMISSING ONE DEFENDANT
AND DIRECTING SERVICE
BY FIRST CLASS MAIL AND
PROCEDURES

Plaintiff is proceeding *pro se* and *in forma pauperis* in this action under 42 U.S.C. § 1983. In his Amended Complaint, plaintiff alleges that: (a) defendants failed to release him on his earned early release date and (b) unlawfully imprisoned him on the basis that “he was sentenced to served Community Placement Supervision Conditions while incarcerated, in addition to his standard range sentence.” Dkt. #11 at p.3. Plaintiff contends that defendants’ action of false imprisonment violated his liberty interests under the Fourteenth Amendment by causing him to serve two types of community placement sentences. Plaintiff identifies the following defendants in this action: 1) Joseph Lehman, Washington State Department of Corrections Secretary and 2) George Appel¹, Snohomish County Prosecutor.

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¹This Amended Order is issued to correct the spelling of defendant Appel’s last name, which was inadvertently misspelled in the original Order Dismissing One Defendant and Directing Service by First Class Mail and Procedures that was issued by this Court on July 22, 2005. See Dkt. #13.

1 The Court, having reviewed Plaintiff's amended complaint and the balance of the record,
2 does hereby find and ORDER:

3 (1) As to defendant George Appel, Snohomish County Prosecutor, the amended
4 complaint fails to state a claim. Prosecutorial immunity protects eligible government officials
5 when they are acting pursuant to their official role as advocate for the State performing
6 functions "intimately associated with the judicial phase of the criminal process." *Imbler v.*
7 *Pachtman*, 424 U.S. 409, 430 (1976); *see also Kalina v. Fletcher*, 522 U.S. 118, 124-26
8 (1997); *Cruz v. Kauai County*, 279 F.3d 1064, 1067 (9th Cir. 2002). Prosecutorial immunity
9 extends to actions during both the pre-trial and post-trial phase of case. *Demerv v. Kupperman*,
10 735 F.2d 1139, 1144 (9th Cir. 1984).

11 Here, Plaintiff challenges defendant Appel's actions at a March 22, 2005, hearing on
12 Plaintiff's motion regarding his Community Placement Sentence. Dkt. #11 at p. 4. Because the
13 actions were intimately connected with the judicial phase of the criminal process, this complaint
14 is therefore DISMISSED as to Snohomish County Prosecutor George Appel under 28 U.S.C. §
15 1915(e)(2)(B)(ii) for failure to state a claim upon which relief may be granted.

16 (2) Service by Clerk

17 The Clerk is directed to send the following to the remaining defendant, Joseph Lehman by
18 first class mail: a copy of the amended complaint and of this Order, a copy of the Notice of
19 Initial Assignment and Consent to Proceed before a United States Magistrate Judge, two copies
20 of the Notice of Lawsuit and Request for Waiver of Service of Summons, a Waiver of Service
21 of Summons, and a return envelope, postage prepaid, addressed to the Clerk's office.

22 (2) Response Required

23 Defendant shall have **thirty (30) days** within which to return the enclosed Waiver of
24 Service of Summons. Any defendant who timely returns the signed Waiver shall have **sixty (60)**
25 **days** after the date designated on the Notice of Lawsuit to file and serve an answer to the
26

1 Amended Complaint or a motion permitted under Rule 12 of the Federal Rules of Civil
2 Procedure.

3 Any defendant who fails to timely return the signed Waiver will be personally served with
4 a summons and Complaint, and may be required to pay the full costs of such service, pursuant to
5 Rule 4(d)(2). A defendant who has been personally served shall file an answer or motion
6 permitted under Rule 12 within **thirty (30) days** after service.

7 (3) Filing and Service by Parties, Generally

8 All attorneys admitted to practice before this Court are required to file documents
9 electronically vial the Court's CM/ECF system. Counsel are directed to the Court's website,
10 www.wawd.uscourts.gov, for a detailed description of the requirements for filing via CM/ECF.
11 All non-attorneys, such as *pro se* parties and/or prisoners, may continue to file a paper original
12 of any document for the court's consideration. A party filing a paper original does not need to
13 file a chambers copy. All filings, whether filed electronically or in traditional paper format, must
14 indicate in the upper right-hand corner the name of the Magistrate Judge to whom the document
15 is directed. Additionally, any document filed with the Court must be accompanied by proof that
16 such documents have been served upon counsel for the opposing party (or upon any party acting
17 pro se). The proof shall show the day and manner of service and may be written
18 acknowledgment of service, by certificate of a member of the bar of this court, or by affidavit of
19 the person who served the papers.

20 (4) Motions

21 Any request for court action shall be set forth in a motion, properly filed and served.
22 Pursuant to amended Local Rule CR 7(b), any argument being offered in support of a motion
23 shall be submitted as a part of the motion itself and not in a separate document. **The motion**
24 **shall include in its caption (immediately below the title of the motion) a designation of the**
25 **date the motion is to be noted for consideration upon the court's motion calendar.**
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1 Stipulated and agreed motions, motions to file overlength motions or briefs, motions for
2 reconsideration, joint submissions pursuant to the option procedure established in CR
3 37(a)(2)(B), motions for default, requests for the clerk to enter default judgment, and motions
4 for the court to enter default judgment where the opposing party has not appeared shall be noted
5 for consideration on the day they are filed. *See* Local Rule CR 7(d)(1). All non-dispositive
6 motions shall be noted for consideration no earlier than the third Friday following filing and
7 service of the motion. *See* Local Rule CR 7(d)(3). Dispositive motions shall be noted for
8 consideration no earlier than the fourth Friday following filing and service of the motion.

9 For electronic filers, all briefs and affidavits in opposition to either a dispositive or non-
10 dispositive motion shall be filed and served not later than 11:59 p.m. on the Monday
11 immediately preceding the date designated for consideration of the motion. If a party files a
12 paper original (i.e. a *pro se* and/or prisoner), that opposition must be received in the Clerk's
13 office by 4:30 p.m. on the Monday immediately preceding the date designated for consideration
14 of the motion. If a party fails to file and serve timely opposition to a motion, the court may
15 deem any opposition to be without merit.

16 Additionally, the party making the motion may file and serve, not later than 11 :59 p.m. (if
17 filed electronically) or 4:30 p.m. (if filing a paper original with the Clerk's office) on the judicial
18 day immediately preceding the date designated for consideration of the motion, a response to the
19 opposing party's briefs and affidavits.

20 (5) Direct Communications with District Judge or Magistrate Judge

21 No direct communication is to take place with the District Judge or Magistrate Judge with
22 regard to this case. All relevant information and papers are to be directed to the Clerk.

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1 (6) The Clerk is directed to send a copy of this Order and of the General Order to
2 plaintiff.

3 DATED this 8th day of August, 2005.

4
5 s/James L. Robart

6 JAMES L. ROBART
7 United States District Judge

8 Recommended for Entry
9 this 27th day of July, 2005

10
11 s/ MONICA J. BENTON
12 United States Magistrate Judge